

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case Number: 16-cr-20146

v.

Honorable Thomas L. Ludington

D-1 IRENE MARIA MARTINEZ GONZALEZ,

Defendant.

**ORDER GRANTING DEFENDANT'S MOTION FOR CLARIFICATION REGARDING
GUIDELINE CONSTRUCTION**

On March 9, 2016 the grand jury issued an indictment charging Defendant Irene Martinez Gonzalez and two co-defendants with one count of conspiring to transport, harbor, and shield aliens in violation of 8 U.S.C. §§ 1324(a)(1)(A)(ii), (iii) and (v). *See* ECF No. 35. The charge is related to Martinez Gonzalez's alleged transportation of aliens to farms in Huron and Tuscola Counties in order to enable the aliens to obtain work. *Id.* She also allegedly transported the illegal aliens to assist them in cashing paychecks, sending wire transfers of funds, shopping for food and clothes, attending medical and dental appointments, and attending immigration proceedings. *Id.* Both of Martinez Gonzalez's co-defendants have pled guilty to the charged conduct. *See* ECF Nos. 56, 58.

On June 24, 2016 Defendant Martinez Gonzalez filed a motion for an order clarifying the relevant guideline and statutory construction. *See* ECF No. 57. Through her motion, Martinez Gonzalez seeks clarification regarding the relevant unit for applying the U.S.S.G. § 2L1.1(b)(2) guideline enhancement, relating to offenses involving the smuggling, transporting, and/or harboring of unlawful aliens. The enhancement under that section provides as follows:

If the offense involved the smuggling, transporting, or harboring of six or more unlawful aliens, increase [the base offense level] as follows:

<u>Number of Unlawful Aliens</u>	<u>Smuggled, Transported, or</u>	<u>Harbored</u>	<u>Increase in Level</u>
(A) 6-24			add 3
(B) 25-99			add 6
(C) 100 or more			add 9.

See U.S.S.G. § 2L1.1(b)(2). Defendant alleges that the relevant unit of prosecution under that section is the “number of unlawful aliens.” The Government disagrees, arguing that the relevant unit of prosecution is the number of transactions (or number of smuggling, transportation, or harboring incidents).

A plain reading of § 2L1.1(b)(2) establishes that the number refers to unlawful aliens, not the number of transportations. This reading of the guideline is consistent with the Eleventh Circuit’s decision in *United States v. Martinez*, F. App’x 169 (11th Cir. 2010). There the defendant was charged with encouraging and inducing aliens to enter and reside in the United States in violation of 8 U.S.C. § 1324(a)(1)(A)(iv). Despite the fact that the defendant had listed 176 aliens in the ledger in her residence, the presentence investigation report recommended only a six point enhancement under § 2L1.1(b)(2) for smuggling, transporting, or harboring 25-99 unlawful aliens. The presentence investigation report reasoned that, because it could not be determined whether any single alien had multiple documents certified, it could not be assumed that 100 documents corresponded to 100 aliens. *Martinez*, F. App’x at 173. In affirming the District Court, the Eleventh Circuit held that the District Court correctly based its calculation of the relevant guideline range under § 2L1.1(b)(2)(B) on the number of aliens the defendant assisted. *Id.* at 178.

Based on this authority, any enhancement based on § 2L1.1(b)(2)(B) must be based on the number of aliens involved, not the number of transportations. For example, if Defendant is found to have transported a single unlawful alien seven times, the unlawful alien may only be counted once for the purpose of calculating the § 2L1.1(b)(2)(B) enhancement.

Accordingly, it is **ORDERED** that Defendant Martinez Gonzalez's motion for an order regarding guideline and statutory construction, ECF No. 57, is **GRANTED**.

Dated: July 26, 2016

s/Thomas L. Ludington

THOMAS L. LUDINGTON

United States District Judge

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on July 26, 2016.

s/Michael A. Sian

MICHAEL A. SIAN, Case Manager